

BEFORE THE
ILLINOIS COMMERCE COMMISSION

ROB McWHINNIE (DeHEVE'S TAVERN)) DOCKET NO.
) 06-0784
-vs-)
)
CENTRAL ILLINOIS PUBLIC SERVICE)
COMPANY d/b/a AmerenCIPS)
)
Complaint as to a deposit request)
in Auburn, Illinois.)

Springfield, Illinois
January 17, 2007

Met, pursuant to notice, at 9:30 a.m.

BEFORE:

MR. MICHAEL WALLACE, Administrative Law Judge

APPEARANCES :

MR. ROB McWHINNIE
219 Springfield Street
Auburn, Illinois
Ph. # (217) 438-6344

(Appearing pro se)

SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
Ln. #084-002710

1 APPEARANCES: (Cont'd)

2 MR. EDWARD FITZHENRY
Attorney at Law
3 1901 Chouteau Avenue
P.O. Box 66149, Mail Code 1310
4 St. Louis, Missouri 63166-6149
Ph. # (214) 554-3533

5
(Appearing on behalf of AmerenCIPS
6 via teleconference)

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1	<u>I N D E X</u>				
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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13		<u>EXHIBITS</u>			
14				<u>MARKED</u>	<u>ADMITTED</u>
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PROCEEDINGS

JUDGE YODER: By the authority vested in me by the Illinois Commerce Commission, I now call Docket 06-0784. This is a complaint filed by Rob McWhinnie, I assume doing business as DeHeve's, is that how you say it?

MR. McWHINNIE: Correct.

JUDGE YODER: DeHeve's Tavern versus Central Illinois Public Service Company doing business as AmerenCIPS. It is a complaint regarding a deposit request in Auburn, Illinois.

Mr. McWhinnie, could you state your name, address and phone for the record, please?

MR. McWHINNIE: My name is Robert McWhinnie. It is 219 Springfield Street, Auburn, Illinois, phone number is (217) 438-6344.

JUDGE YODER: Mr. Fitzhenry, if you could enter your appearance?

MR. FITZHENRY: Yes. On behalf of the Respondent Central Illinois Public Service Company doing business as AmerenCIPS, my name is Edward Fitzhenry. My address is 1901 Chouteau Avenue, Post

1 Office Box 66149. The mail code 1310, St. Louis,
2 Missouri 63166-6149. My telephone number is area
3 code (214) 554-3533.

4 JUDGE YODER: All right. Anyone else wishing
5 to enter their appearance? Let the record reflect no
6 response.

7 I might -- did you say your address,
8 Mr. McWhinnie was 209?

9 MR. McWHINNIE: Uh-huh.

10 JUDGE YODER: For some reason I thought I heard
11 you say 219. So I just wanted to make sure we had
12 that correct on here.

13 This is a complaint for, I guess,
14 AmerenCIPS is requesting a deposit. So I will kind
15 of try and explain. I don't know how familiar you
16 are with our procedures here.

17 Or, Mr. Fitzhenry, do you have any
18 suggestion as to where to go from here? Do we want
19 to just set a date for testimony to start getting
20 filed?

21 MR. FITZHENRY: Well, I think under the rules,
22 Judge --

1 JUDGE YODER: Oh, you need an answer.

2 MR. FITZHENRY: Pardon?

3 JUDGE YODER: You need to file an answer.

4 MR. FITZHENRY: That's correct. And I think
5 one of the purposes of today's hearing is to, if need
6 be, get clarification of the complaint. I do have a
7 question for Mr. McWhinnie to better understand the
8 nature of his complaint, if I might proceed?

9 JUDGE YODER: Okay.

10 MR. FITZHENRY: Because otherwise I am not real
11 sure how to structure an answer.

12 Sir, I understand that your complaint
13 is about the Company's requirement that you place a
14 deposit at the subject premises. My question is, is
15 your complaint because the premises are commercial
16 and you believe that a deposit is not required or is
17 your complaint that the premises are residential in
18 use and that a deposit is not required?

19 MR. McWHINNIE: My complaint is on two bases.
20 One, when did you as Ameren or municipalities prior
21 recognize this as a business when it was regarded as
22 a residence from the very existence of the building.

1 My mother was born there almost 74 years ago. Prior
2 to that it was a residence. It became a business in
3 '51.

4 You guys have not recognized us until
5 this year as a business, because I was explained in a
6 letter and over the phone that this is a new
7 business. So, therefore, I would like to know when
8 you considered this a new business, why you didn't
9 recognize it as a business in 1951, and, therefore,
10 changed it into a business name. You allowed it to
11 remain in a personal name all the way up until I
12 brought it to your attention in October.

13 Because my grandmother has been
14 deceased since '96 and it was in her name all the way
15 until October of this year.

16 MR. FITZHENRY: And does that also encompass
17 your second point?

18 MR. McWHINNIE: My second point is, if you
19 consider this a business, why has it not been treated
20 as a business? It was always a residence. It still
21 remains a residence on the back part. You just now
22 acknowledge it as a business, and I would like to

1 know why that is, why it isn't treated as a business
2 in regards to -- I can give you a prime example, it
3 is probably not relevant right here, but my business
4 on Saturday was without power until four o'clock in
5 the afternoon which roughly cost me approximately
6 about \$400 business, while Ameren employees were down
7 hooking up residents around the area and getting
8 their power restored prior to doing business.

9 And from what I have read and
10 understand, businesses take priority over residents.
11 I understand hospitals and health areas take first
12 but then I understand businesses are second. So if
13 this is a business, why is it not being treated as a
14 business.

15 MR. FITZHENRY: So to be clear, if I heard you
16 correctly, sir, the complaint is that the count has
17 been treated as residential for many years up until
18 October 2006 and now the Company treats it as a
19 commercial account. That's your issue.

20 MR. McWHINNIE: Yeah. Well, basically because
21 the fact is, if you considered it a business years
22 past, why wouldn't you have asked for a deposit which

1 obviously would have been significantly less than
2 \$718. If you would have recognized this as a
3 business back in even '76 when my grandfather passed
4 and it was changed from his name to my grandmother's
5 name, why did you not ask for a deposit then. We
6 wouldn't be going through this now at \$718.

7 Obviously, in your letter you state to
8 me that this will -- this deposit will take effect
9 but in the future that if there is a rate increase,
10 that you can come back and ask for additional
11 deposits. Like I am not aware that there is a rate
12 increase out there?

13 MR. FITZHENRY: Let me just finish up my
14 follow-up and then I will leave you be because I want
15 to be -- so I understand it, state it again, that the
16 dispute that you have is the fact that for many years
17 the account has been treated as a residential
18 account. In October 2006 it is being treated as a
19 commercial account. You take issue with that.

20 If the Commission does find that the
21 company was right in treating this as a commercial
22 account in October 2006 going forward, you are not

1 saying then that the Company does not have the right
2 to seek a deposit on a commercial account, correct?

3 MR. McWHINNIE: Yeah, I would not dispute that.

4 MR. FITZHENRY: That helps quite a bit, Judge.

5 Thank you, Mr. McWhinnie.

6 So with that, Judge, you know, we will
7 be able to file an answer within ten days. And it
8 does appear to me that there are a lot of facts, as
9 you might have assessed, that we would probably want
10 to do some amount of discovery. And, you know, I
11 would suggest, you know, 45 to 60 days for that.

12 JUDGE YODER: Okay, let me -- well, is the 26th
13 all right or do you want the 29th? Ten days is on
14 Saturday.

15 MR. FITZHENRY: Oh, the 29th at least.

16 JUDGE YODER: All right. I will direct -- you
17 filed the complaint and as indicated you two have
18 kind of discussed what your exact issue is. So the
19 Company now has to file an answer to your complaint,
20 find out whether they agree or disagree with the
21 various points of it.

22 And perhaps what we will do then is

1 set the two of you to exchange discovery requests, we
2 call them data requests, discovery requests. You can
3 send questions to CILCO -- or, I am sorry, CIPS.

4 MR. FITZHENRY: It is CIPS.

5 JUDGE YODER: Asking them to lay out the
6 various rules, what they have on your file, whatever
7 information you wish to discover from CIPS.

8 They can send you data requests or
9 discovery requests and also elicit information from
10 you about the case.

11 We will probably come back in about 60
12 days. I assume the whole deposit request is in
13 abeyance right now.

14 MR. McWHINNIE: Yeah, I have notified them that
15 until I have a judgment one way or the other, that I
16 am not paying the deposit. If so be it they choose
17 to shut off my power, then I guess I will see them in
18 legal court.

19 JUDGE YODER: We will probably set this for a
20 status in about 60 days. Hopefully, the parties will
21 have exchanged all their discovery requests and
22 gotten the answers back. Usually it is about 28 days

1 to answer any discovery requests. And we will come
2 back in about 60 days and see where we are at.

3 And the general procedure then is you
4 are the complainant so it is your burden to basically
5 start the case. So generally what we do is the
6 parties file prefiled testimony. That would be you
7 would right write out kind of in a question and
8 answer format who you are, where you are working,
9 where this business is, and you would lay out item by
10 item all your facts regarding the property and why
11 you don't feel you should have to pay either the
12 deposit they are requesting or any deposit or maybe
13 it should be a lessor deposit or whatever.

14 Then after you file that, then we will
15 set those deadlines at the next hearing date. The
16 Company would file their response. In this case we
17 would probably just have, after their response is
18 due, we would have a hearing date, assuming the
19 parties don't settle everything, okay.

20 MR. McWHINNIE: Okay.

21 JUDGE YODER: Any questions about kind of our
22 general procedure?

1 MR. McWHINNIE: No. Yeah, I guess. When I
2 file my questions, do I file them with them or with
3 you?

4 JUDGE YODER: No, just send them to the
5 Company.

6 MR. McWHINNIE: Send them to CIPS.

7 JUDGE YODER: Yeah. Whatever you ask for might
8 or might not be relevant as part of the case. So
9 that's just something the two of you exchange and
10 then if there is something you have that you feel is
11 relevant to your case, then you can present that at
12 hearing.

13 MR. McWHINNIE: I guess my only question I
14 would like to know is I will find out what our
15 utility cost was for '76 when I recognize it as a
16 business. They should have been. And that will be
17 my question.

18 JUDGE YODER: You guys can hammer that out over
19 the next 60 days.

20 Perhaps for my edification, Mr.
21 Fitzhenry, would you be able to provide or just so I
22 don't have to dig around, I assume AmerenCIPS has

1 some tariffs regarding deposit rules?

2 MR. FITZHENRY: Well, the deposit rules are
3 primarily dictated by Part 280. But we do have
4 tariffs in place that deal with deposits. But in
5 large part they are required to be in compliance with
6 Commission rules.

7 JUDGE YODER: Okay. Well, I will see what I
8 can find looking through there and maybe that will
9 answer any questions I have.

10 How about March 22 come back for
11 another status hearing?

12 MR. FITZHENRY: That's fine.

13 JUDGE YODER: Is there a certain day of the
14 week, Mr. McWhinnie? That's a Thursday. Is there a
15 day that works for you?

16 MR. McWHINNIE: Actually, Thursday is not a
17 great day for me. Any other day but Thursday.

18 JUDGE YODER: How about Wednesday?

19 MR. McWHINNIE: Wednesdays are fine.

20 JUDGE YODER: March 21, Mr. Fitzhenry?

21 MR. FITZHENRY: Yes, that will be fine.

22 JUDGE YODER: You want to say nine o'clock or

1 9:30?

2 MR. FITZHENRY: Nine o'clock is fine.

3 JUDGE YODER: Then we will direct the Company
4 to file a formal answer to the complaint then by
5 January 29, 2007, and we will come back for a
6 continued status hearing March 21, 2007, at 9:00 a.m.

7 MR. FITZHENRY: Judge, if you would like, I
8 could set up a conference call for that March 21
9 status hearing, in which case Mr. McWhinnie would not
10 have to come to the hearing room.

11 MR. McWHINNIE: I will be here.

12 JUDGE YODER: If for some reason you can't, you
13 could get ahold of Mr. Fitzhenry because Ameren has
14 the services where you can just call in instead of
15 driving here. But Auburn is not that far away.
16 That's fine.

17 MR. FITZHENRY: I would like a copy of the
18 transcript, please.

19 JUDGE YODER: Anything else, Mr. McWhinnie,
20 before we break for the day?

21 MR. McWHINNIE: No.

22 JUDGE YODER: Mr. Fitzhenry, anything else?

1 MR. FITZHENRY: Mr. McWhinnie, just be sure
2 that on all future matters dealing with this case
3 deal with me, okay?

4 MR. McWHINNIE: Absolutely. And if you are my
5 contact person, would that be the same way with
6 discovery matters?

7 MR. FITZHENRY: Yes, absolutely. So in ten
8 days or less I am going to respond to your complaint,
9 and in that document there will be my name and
10 telephone number, my e-mail address, my address so
11 that you can reach me in any way. If you have any
12 questions that come up about your bill and so forth,
13 please direct them to me.

14 MR. McWHINNIE: I certainly will. I will get
15 you my information as well.

16 MR. FITZHENRY: And Judge Yoder knows and I
17 will offer to you, as I do to other complainants, if
18 you have any questions about Commission procedures
19 and that sort of thing, I will be very fair to answer
20 those questions to you.

21 JUDGE YODER: All right. Well, let me ask one
22 other thing before we go off the record. Do you have

1 an e-mail address that you use and check regularly?

2 MR. McWHINNIE: Uh-huh.

3 JUDGE YODER: I don't know if you are aware,
4 but we do a lot of our communications from the
5 Clerk's office and Ameren sending out, you know,
6 paperwork or whatever. We do a lot by e-mail. Would
7 you be willing to accept service of papers by e-mail?

8 MR. McWHINNIE: No, because it is a personal.
9 It is not a business. So I prefer to conduct
10 business as business.

11 I am virtually right now setting up a
12 business e-mail and hopefully I will have it done in
13 the next couple of weeks. So we could do it at that
14 time.

15 JUDGE YODER: Well, if you change your mind at
16 the next status --

17 MR. McWHINNIE: If it is all right, if I have
18 that up and going on my business part within the next
19 week or two, we can conduct it that way.

20 JUDGE YODER: You can get ahold of Mr.
21 Fitzhenry and exchange any of that, and we can
22 address the official services by the Clerk and

1 everything at the next hearing. That's fine.

2 Do you need a written notice of the
3 next hearing date sent to you or do you have it
4 written down?

5 MR. McWHINNIE: No, that's fine.

6 JUDGE YODER: Okay. All right then. Thank
7 you. We will be back then on March 21.

8 (Whereupon the hearing in this
9 matter was continued until March
10 21, 2007, at 9:00 a.m. in
11 Springfield, Illinois.)
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